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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,922	07/14/2003	Athanassios Tzikas	4-22221/A/DIV	7981

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CIBA SPECIALTY CHEMICALS CORPORATION  
PATENT DEPARTMENT  
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EXAMINER

POWERS, FIONA

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/618,922	TZIKAS ET AL.
	Examiner	Art Unit
	Fiona T. Powers	1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. 09/899,439.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/16/03</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

Art Unit: 1626

Receipt is acknowledged of the preliminary amendment filed July 14, 2003 and the information disclosure statement filed October 16, 2003, which have been entered in the file.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15 to 20, 22 and 24 to 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips et al. (US 5936073), cited by applicants.

The reference discloses the claimed dyes of the formula (1) wherein A is the radical of a formazan dye of the formula (8b), B is ethylene or propylene, V<sub>1</sub> and V<sub>2</sub> are N, X<sub>1</sub> and X<sub>2</sub> are chlorine, R<sub>1</sub>, R<sub>2</sub> and R<sub>3</sub> are hydrogen and T is a radical of the formula (2c) or (2c') wherein arylene is phenylene and Y is -CH<sub>2</sub>CH<sub>2</sub>OSO<sub>3</sub>H. Note Examples 7 and 8 in columns 25 to 28.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 to 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips et al. (US 5936073).

Determination of the scope and content of the prior art (MPEP §2141.01)

The reference discloses structurally similar formazan dyes which are useful for dyeing cellulose fibers such as cotton, synthetic cotton, hemp and synthetic hemp. The dyes of the reference are structurally similar to the claimed dyes wherein A is the radical of a formazan dye of the formula (8b), B is ethylene, propylene or butylene, V<sub>1</sub> and V<sub>2</sub> are N, X<sub>1</sub> and X<sub>2</sub> are chlorine or fluorine, R<sub>1</sub>, R<sub>2</sub> and R<sub>3</sub> are hydrogen and T is a radical of the formula (2c) or (2c') wherein arylene is phenylene and Y is -CH<sub>2</sub>CH<sub>2</sub>OSO<sub>3</sub>H. Note Examples 7 and 8 in columns 25 to 28.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The dyes of the reference differ from the claimed dyes in that they are homologs or are the chloro analogs of the claimed fluoro dyes. For example, the dyes of Examples 7 and 8 an ethylene radical replaces the propylene radical or the propylene radical replaces an ethylene or butylene radical that is

represented by B in the claimed dyestuffs. The chloro dyes of Examples 7 and 8 differ from the claimed dyes in that one or both chlorine atoms replaces a fluorine atom represented by X<sub>1</sub> and X<sub>2</sub> in the claimed dyes.

Finding of prima facie obviousness---rational and motivation (MPEP §2142-2413)

The reference teaches the interchangeability of these radicals. Note the definition of D (NH(CH<sub>2</sub>)<sub>p</sub>NH where p is an integer from 0 to 4) and X<sub>1</sub> and X<sub>2</sub> (Cl, F) in column 1. One of ordinary skill in the art would have been motivated to make the claimed dyes with the expectation that dyes with similar properties would be obtained. The claimed dyes would have been rendered obvious by the teachings of the reference in the absence of any unobvious property.

Claims 15 to 20, 22 and 24 to 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichert et al. (US 5989297), cited by applicants.

Determination of the scope and content of the prior art (MPEP §2141.01)

The reference discloses a dye of instant formula (1) which is used in a dye mixture. The dye is of the formula (1) wherein A is a monoazo radical of the formula (7d), B is propylene, V<sub>1</sub> and V<sub>2</sub> are N, X<sub>1</sub> and X<sub>2</sub> are chlorine, R<sub>1</sub> and R<sub>2</sub> are hydrogen, R<sub>3</sub>

is  $C_2$ -alkylene that is substituted by hydroxy and T is a radical of the formula (2c) or (2c') wherein arylene is phenylene and Y is  $-CH_2CH_2OSO_3H$ . Note Example 25 in columns 43/44.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the prior art and the claimed invention is that the prior art dyesutff is used in a dye mixture and the claims are to the individual dye.

Finding of prima facie obviousness---rational and motivation (MPEP §2142-2413)

It has been held that it is obvious to use separately that which is used in a mixture for the same purpose. See *In re Kerkhoven*, 205 USPQ 1069. One of ordinary skill in the art would have been motivated to use the dye of the reference separately to dye cellulosic fiber materials with the expectation of obtaining the desired result.

The references made of record and not relied upon show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fiona T. Powers whose telephone number is (571)272-0702. The examiner can normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571)272-0699. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Fiona T. Powers*  
Fiona T. Powers  
Primary Examiner  
Art Unit 1626

ftp  
June 13, 2004